

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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May 13, 2016

The Honorable Dennis McLerran
Regional Administrator
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Administrator McLerran,

On behalf of the Committee on Science, Space, and Technology, I want to express my appreciation for your participation in the hearing entitled *Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II* on Thursday, April 28, 2016.

You have received a verbatim electronic transcript of the hearing for your review. The Committee's rule pertaining to the printing of transcripts is as follows:

The transcripts of those hearings conducted by the Committee and Subcommittees shall be published as a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved.


Transcript edits, if any, should be submitted no later than May 27, 2016. If no edits are received by the above date, I will presume that you have no suggested edits to the transcript.

I am also enclosing questions submitted for the record by Members of the Committee. These are questions that the Members were unable to pursue during the time allotted at the hearing, but felt were important to address as part of the official record. **It would be appreciated if you would respond to these questions by May 27, 2016.**

All transcript edits and responses to the enclosed questions should be submitted to me and directed to the attention of Michelle Stoika at Michelle.Stoika@mail.house.gov. If you have any further questions or concerns, please contact Ms. Stoika at 202.225.6371.

Thank you again for your testimony.

Sincerely,



Lamar Smith
Chairman

Committee on Science, Space & Technology
"Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II"
April 28, 2016

Questions for the Record to:

The Honorable Dennis McLerran, Administrator, U.S. Environmental Protection Agency,
Region 10

Submitted by Ranking Member Eddie Bernice Johnson

1. Reports in the media, public statements by Pebble, and statements from Members made during the hearing, suggest that your Proposed 404(c) Determination for Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application.
 - a) Please clarify the scope of the Proposed Determination and the specific restrictions it places on the proposed Pebble Mine in Bristol Bay.
 - b) Does EPA's use of its 404(c) authority in this case constitute a ban or "veto" of any mining activity in the defined region?
 - c) Could there be mining activity in Bristol Bay even with the proposed 404 (c) restrictions on waterways?
2. Retired EPA Ecologist Phil North was a focus of discussion at the April 28th hearing. Allegations of collusion put forward by Pebble Limited Partnership, and some Majority Members of the Committee, appear to be based on a fundamental misunderstanding of both Mr. North's job responsibilities and the extent to which he could have influence over you and other decision makers at EPA. Specifically, Mr. Tom Collier, the CEO of Pebble, has alleged, in the media, that Mr. North colluded with "anti-mine" organizations, and influenced EPA to conduct a 404(c) action to block the mine.
 - a) What were Mr. North's job responsibilities? Would he have reason to be in contact with any outside organizations, like Pebble or Native Alaskan tribes, as a result of his work? If so, please describe the nature and purpose of these contacts.
 - b) Please describe the nature of any interactions you may have had with Mr. North. Specifically, when were you made aware of Mr. North's opinion as to the use of 404(c) to protect the Bristol Bay Watershed, and, how was his opinion communicated to you?
 - c) Were you aware of anyone else within Region 10 who had an opinion on this issue? If so, did they agree or disagree with Mr. North? Was it common for employees at EPA to have differences of opinion on matters before the Agency? How do these differences of opinions manifest in work products that may have been presented to you or to others within Region 10?

- d) Did Mr. North have the authority to initiate the Bristol Bay Watershed Assessment (BBWA) on his own?
- e) Did Mr. North have the authority to initiate a Section 404(c) action?
- f) Who has the authority to initiate either the BBWA or the 404(c) process?
- g) Can you please describe in detail how you came to the decision to conduct the BBWA, and subsequently the Section 404(c) action?
- h) Did initiating the 404(c) process require you to conduct the Bristol Bay Watershed Assessment first?
- i) You initiated the 404(c) process in February 2014 regarding the proposed Pebble Mine in Bristol Bay by writing the "15-day letter" to the Pebble Limited Partnership. Under the Clean Water Act's regulatory criteria could you have initiated the 404(c) process in regards to the proposed Pebble Mine in Bristol Bay in 2010 as Mr. North believed that EPA's leadership should have done? If so, why did you choose to proceed as you did?

Committee on Science, Space & Technology
“Examining EPA’s Predetermined Efforts to Block the Pebble Mine, Part II”
April 28, 2016

Questions for the Record to:

The Honorable Dennis McLerran, Administrator, U.S. Environmental Protection Agency,
Region 10

Submitted by Representative Esty

1. Mr. McLerran, many reports in the media and statements by Pebble have suggested that your Proposed Determination regarding the 404(c) in Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application. As we know, this is not what your Proposed Determination intends.

Several mine design scenarios in the final Bristol Bay Watershed Assessment found that the presence of a mine in Bristol Bay would destroy 94 miles of salmon streams and alter 33 miles of other streams within the watershed.

However, your Proposed Determination released in July 2014 did not ban Pebble from building a mine outright, rather it restricted the degree of damage a mine could cause, containing the damage to 5 miles of salmon spawning streams and less than 1,100 acres of wetlands, lakes or ponds where these fish live.

- a. Can you help clarify this issue for us? What exactly does your Proposed Determination do?
- b. Does the EPA’s use of its 404 (c) authority work as a ban on any mining activity?
- c. Now specifically in Pebble’s case, does EPA’s use of 404 (c) authority “veto” any mining activity in Bristol Bay?
- d. Does this step, using 404(c), stop Pebble from filing permit applications?
- e. Could there be mining activity in Bristol Bay even with 404 (c) restrictions on waterways?